



Federal Communications Commission
Washington, D.C. 20554

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DA 05-2245
In Reply Refer to:
1800B3-DT

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In Re: Application for New LPFM Station,
Banning, CA
Calvary Chapel of the Pass
File No. BNPL-20000605AJC Facility
ID No. 124422

Petition for Reconsideration

Dear Mr. O'Connor:

This letter refers to the captioned application of Calvary Chapel of the Pass ("CCP") for a new Low Power FM ("LPFM") station in Banning, California. CCP filed its application on June 5, 2000. On March 19, 2004, the Media Bureau dismissed CCP's application as inadvertently accepted for filing.¹ On April 14, 2004, CCP filed a Petition for Reconsideration. For the reasons set forth below, we reinstate the application.

Background.

CCP and other Calvary Chapel applicants located around the country participated in the first round of the LPFM filing windows. The first LPFM filing windows permitted only local applicants to apply for new LPFM stations and limited each non-governmental applicant to a single application filing.² Item 4 requires an applicant to certify that it **either** (1) is an educational institution or organization that is physically headquartered within 16.1 kilometers (10 miles) of the proposed transmitter site; (2) is an educational institution or organization with seventy-five percent (75%) of its board members residing within 16.1 kilometers from the transmitter site; or (3) proposes a public safety radio service and has jurisdiction within the service area of the proposed LPFM station. Item 5(a) requires an applicant to certify that "No party to this application has an attributable interest in any non-LPFM station, including any full power AM or FM station, FM translator station, full or low power television station, or any other media subject to the Commission's ownership restrictions." There are exceptions to this ownership restriction for "local chapters" of a national or other large organization set forth in the attribution

¹ *Letter to Listed Applicants*, Reference 1800B3-GDG/SW (MB Mar. 19, 2004) ("*Mar. 19 Letter*"). By the same letter a number of other applications, all filed by other Calvary Chapel applicants, were also dismissed.

² See 47 C.F.R. § 73.853(b). See also FCC Form 318, Section II, Items 4 and 5, and Instructions for FCC Form 318 at 6.

provisions of Section 73.858 of the Commission's rules.³ The Instructions for FCC Form 318 summarize these exceptions as follows:

Under this provision a local chapter of a national organization will not have the attributable media interests of the national organization attributed to it, provided that the local chapter: (1) is incorporated in its local area separately from the national organization with which it is affiliated; **and** (2) has a distinct local presence and mission. To satisfy the second element of this standard, an applicant must demonstrate that it has significant membership within its local area and that it has a local purpose that can be distinguished from the purpose of the national organization with which it is affiliated.⁴

Each of the Calvary Chapel-named applicants, including CCP, submitted information to establish that it qualified for the "local chapter" exemption, certifying its local presence and submitting an exhibit to demonstrate a distinct local purpose. In dismissing the applications, the staff stated that it is undisputed that each applicant is separately incorporated and that it has a headquarters within the proposed broadcast community. However, the staff found that the submitted statements of educational purpose failed to distinguish the applicant from the other Calvary Chapel applicants which filed very similar applications for LPFM stations, or from national Calvary Chapel radio companies such as CSN International and Calvary Chapel of Twin Falls that own numerous full-service and FM translator radio stations throughout the country.⁵ Nothing in the educational purpose of the applications referenced the respective communities of license in any way or demonstrated "a local purpose that can be distinguished from the purpose of the national organization with which it is affiliated." Without this evidence, the staff could not find that the purported "local chapter" had a distinct local presence and mission. Accordingly, the staff determined, pursuant to Section 73.853(b) and 73.858 of the Commission's rules, that the applications were patently defective and the applications, including that of CCP, were dismissed as inadvertently accepted for filing. The informal objections that were filed against these applications were dismissed as moot.⁶ On April 13, 2004, CCP filed its Petition for Reconsideration.

Discussion

Petition for Reconsideration. In its Petition for Reconsideration, CCP argues that the Letter Decision incorrectly assumes that CCP "is part of a national organization, in which all affiliates or local chapters share the name 'Calvary Chapel.'"⁷ CCP claims that it is not affiliated with any other Calvary Chapel organization.⁸ Because it is not affiliated with Calvary Chapel, CCP argues, its application should

³ 47 C.F.R. § 73.858, "Attribution of LPFM Station Interests."

⁴ Instructions for FCC Form 318, pp. 5-6.

⁵ See, e.g., <http://www.csnradio.com>.

⁶ Informal objections against several of these applications filed by Lawyers Guild alleged that they did not demonstrate a "distinct local presence and mission," and therefore, they do not fall under the exceptions to the ownership restrictions pursuant to Section 73.858 of the Commission's rules. These objections were dismissed as moot in the letters dismissing the applications.

⁷ *CCP Petition for Reconsideration* (filed April 14, 2004) ("*CCP Petition*") at 1.

⁸ *Id.* at 2. In support of this assertion, CCP attaches to its Petition three letters. The first letter, from Christopher E. Johnson, President of CCP, declares that CCP has "no financial or ownership ties to any other organization" and that "there is no controlling entity that has legal or financial authority over CCP." *CCP Petition*, Exhibit 1. The second letter, from Pastor Michael Kestler, President of Calvary Chapel Twin Falls ("CCTF") and Vice President of CSN International, declares that "neither CCTF nor CSN has any legal partnership or control over any of the applicants

be analyzed “under the criteria set forth in Section 73.853 of the rules, under which CCP qualifies as an LPFM applicant.”⁹ Nevertheless, CCP contends, if it is considered an affiliate it qualifies for the attribution exemption under Section 73.858(b) because it was separately incorporated and has a distinct local presence and mission in its proposed community of license. In support of this contention, CCP provided a Revised Statement of Educational Purpose that details its relationship with Banning, California, and outlines the proposed educational purpose of its LPFM station.¹⁰ For all these reasons, CCP argues, the Commission should reinstate its application.¹¹

CCP formally and voluntarily identifies itself with the Calvary Chapel organization and has submitted an application substantially identical to those of other Calvary Chapel applicants. While these facts are highly probative on the issue of whether CCP should be treated as a “local chapter” of Calvary Chapel, we need not resolve that matter here. We agree with CCP that even if it is considered a local chapter of a “national” Calvary Chapel organization, it qualifies for the attribution exemption of Section 73.858(b) in that the Revised Statement demonstrates that CCP has a distinct local presence and mission in Banning. According to this Revised Statement, CCP provides Banning with a variety of programs and activities including drug and alcohol counseling, financial counseling, and free food and clothing distribution. Thus, we find that CCP has demonstrated a “distinct local presence and mission” within Banning and is therefore eligible to become an LPFM station licensee.¹²

Conclusion/Actions

Accordingly, Calvary Chapel of the Pass’s Petition for Reconsideration IS GRANTED, and its application for a new LPFM station IS REINSTATED. Furthermore, Calvary Chapel of the Pass’s application (File No. BNPL-20000605AJC) for a new LPFM station IS GRANTED. The authorization will follow under separate cover.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Calvary Chapel of the Pass

cited in the letter.” *CCP Petition*, Exhibit 2 at 1. The third letter, from Pastor Chuck Smith, Senior Pastor at Calvary Chapel Costa Mesa, Inc., who started the first “Calvary Chapel” thirty years ago, declares that other Calvary Chapel churches “operate totally and separate [sic] from any relationship to us, as they minister to their local community” and explains that “the name ‘Calvary Chapel’ would merely be used to refer to a style of ministry and teaching alone, for the sake of clarity....” *CCP Petition*, Exhibit 3 at 1, 2.

⁹ *Id.* at 2. See notes 3 and 4, *supra*, and accompanying text.

¹⁰ *Educational Purpose; Use of Station, Calvary Chapel of the Pass* (filed April 15, 2004) (“*Revised Statement*”).

¹¹ *CCP Petition* at 8.

¹² As stated above, it is undisputed that CCP was separately incorporated within Banning.